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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 112 of 1988
with
SPECIAL CIVIL APPLICATION No 113 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

SHANTABEN ISHWARBHAI PATEL & ORS.

Versus

ADDL. CHIEF SECRETARY, REVENUE DEPT. & ORS.

Appearance:

Kum. V.P. Shah, Advocate, for the petitioners

Shri M.R. Anand, Govt. Pleader (Senior Counsel) with Shri T.H. Sompura, Asst. Govt. Pleader, for the Responents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 10/04/96

ORAL JUDGEMENT

Practically identical orders passed by the Collector of Vadodara (respondent No. 2 herein in each petition) as affirmed in revision by the common order

passed by the Additional Chief Secretary, Revenue Department (Appeals) at Ahmedabad (respondent No. 1 herein) on behalf of the State Government (respondent No. 3 herein in each petition) on 25th November 1987 is under challenge in these petitions under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 fixed premium at the rate of 70% of the market value with respect to the subject-matter of these petitions for conversion thereof from new tenure to old tenure. The petitioners have also incidentally challenged the Government Resolutions passed on 19th February 1979 and 4th December 1986 prescribing the rate of premium for the purpose of conversion of lands from new tenure to old tenure qua the scheme under sec. 21(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Ceiling Act for brief).

2. The petitioners in both these matters are common. Practically identical orders passed by the respondents are challenged in both these petitions. In both these petitions have been challenged the aforesaid resolutions passed by respondent No. 3. Common questions of law and fact are found arising in both these petitions. I have therefore thought it fit to dispose of both these petitions by this common judgment of mine.

3. The facts giving rise to these petitions move in a narrow compass. The petitioners appear to have applied for permission under sec. 21(1) of the Ceiling Act with respect to several parcels of land situated within the urban agglomeration of Vadodara. By the order passed by the Competent Authority at Vadodara on 28th October 1985, such permission came to be granted on certain terms and conditions. Its copy is at Annexure C to each petition. Such conditions included obtaining of what is popularly known as the N.A. permission under the Bombay Land Revenue Code, 1879 (the Code for brief) and also conversion of lands from new tenure to old tenure wherever necessary. It appears that certain lands were new tenure lands. The petitioners thereupon approached respondent No. 2 for grant of permission for conversion of certain parcels of land from new tenure to old tenure. By the order passed by him on 3rd/17th January 1987 under sec. 43 of what is popularly known as the Tenancy Act, such permission came to be granted on payment of the premium at the rate of 70% of the market value of the lands in question. Its copy is at Annexure E to each petition. The petitioners appear to have found the premium amount to be quite exorbitant. They therefore carried the matter in revision before respondent No. 3. It appears to have been assigned to respondent No. 1 for

hearing and disposal. By his order passed on 25th November 1987 but communicted on 16th December 1987, respondent No. 1 rejected it. He also directed respondent No. 2 to initiate proceedings for summary eviction of the occupants of the lands in question. Its copy is at Annexure G to each petition. In the meantime, the petitioners also applied for what is popularly known as the N.A. permission under the Code. By the order passed by respondent No. 2 on 18th March 1987, such permission came to be granted on certain terms and conditions. Its copy is at Annexure F to each petition. So far as the order at Annexure F to each petition is concerned, the petitioners appear to have made no grievance thereagainst. They appear to have accepted it and complied with the conditions attached thereto. The petitioners however felt aggrieved by the order at Annexure E to each petition as affirmed in revision by the order at Annexure G to each petition. They have therefore approached this Court by means of these petitions under article 226 of the Constitution of India for questioning their correctness. In the process, the petitioners have also challenged the legality and validity of two government resolutions of 19th February 1979 at Annexure H to each petition and of 4th December 1986 at Annexure I to each petition. The petitioners have also challenged the condition incorporated in the order at Annexure C to each petition requiring them to obtain the necessary permission for conversion of certain lands from new tenure to old tenure.

4. At the time of hearing learned Advocate Kum. Shah for the petitioners has given up the challenge to the Government Resolutions at Annexures H and I to each petition. She has also given up her challenge to Condition No. 23 incorporated in the order at Annexure C to each petition requiring them to obtain permission for conversion of certain lands from new tenure to old tenure.

5. The grievance voiced by learned Advocate Kum. Shah for the petitioners against the impugned orders at Annexures E and G to each petition is to the effect that the fixation of the premium amount is quite exorbitant and it is in clear disregard of the guidelines issued by respondent No. 3 from time to time by means of Government Resolutions. She has also expressed her grievance against the impugned order at Annexure G to each petition whereby respondent No. 2 is directed to initiate proceedings for summary eviction of the petitioners and persons claiming through them from the lands in question for contravention of sec. 32R of the

Tenancy Act.

6. It appears that the predecessor-in-title of the petitioners was the tenant of the lands involved in each petition. He became the deemed purchaser thereof by virtue of the Tenancy Act. The lands statutorily purchased by him therefore became new tenure lands in his hands. He appears to have breathed his last prior to coming into force of the Ceiling Act leaving behind him the present petitioners as his heirs and legal representatives. It appears that the petitioners filed their declaration in the prescribed form under sec. 6(1) of the Ceiling Act with respect to their holdings within the urban agglomeration of Vadodara including the holdings acquired by their predecessor-in-title by virtue of the statutory purchase under the Tenancy Act. It appears that the combined holding of the petitioners was quite sizeable and the petitioners appear to have been advised to float a scheme under sec. 21(1) of the Tenancy Act so that they could retain the lands if such permission was granted to them. Apropos, they applied on 31st March 1979 for necessary permission under sec. 21(1) of the Ceiling Act. As aforesaid, by the order passed on 28th October 1986 at Annexure C to each petition, such permission was granted on certain terms and conditions.

7. It may be mentioned at this stage that respondent No. 3 has passed resolutions at Annexures H and I to each petition laying down guidelines for fixation of the premium amount for conversion of lands from new tenure to old tenure in case they are covered by the scheme under sec. 21(1) of the Ceiling Act. The resolution at Annexure I requires fixation of the premium amount in accordance with the guidelines given thereunder. The order at Annexure E to each petition as affirmed in revision by the order at Annexure G to each petition has fixed the premium apparently contrary to the guidelines contained in the resolution at Annexure I to each petition. As pointed out hereinabove, the premium amount fixed under the impugned orders is at the rate of 70% of the market value of the lands in question. The guidelines given in the Government Resolution at Annexure I to each petition requires fixation of the premium amount at the rate of 50% of five times the value of compensation payable under sec. 11(1) of the Ceiling Act. In that view of the matter, the impugned order at Annexure E to each petition as affirmed in revision by the order at Annexure G to each petition cannot be sustained in law.

8. The author of the impugned order at Annexure G to each petition has directed respondent No. 2 to initiate the proceeding for summary eviction of the occupants of the lands in question for contravention of sec. 32R of the Act. Learned Advocate Kum. Shah for the petitioners has taken a strong exception to this direction contained therein. According to her, the author of the impugned order at Annexure G to each petition exceeded his jurisdiction in that regard. As against this, learned Government Counsel Shri Anand has submitted that the land acquired by a person by way of statutory purchase under the Tenancy Act could not have been used except for personal cultivation and, if he fails to do so, he has to face consequences under sec. 32R of the Tenancy Act. In that view of the matter, runs the submission of learned Government Counsel Shri Anand for the respondents, the direction contained in the impugned order at Annexure G to each petition calls for no interference by this Court in these petitions under art. 226 of the Constitution of India.

9. It would be quite proper at this stage to look at sec. 32R of the Tenancy Act. It reads:

> "If at anytime after the purchase of the land under any of the foregoing provisions, the purchaser fails to cultivate the land personally, he shall, unless the Collector condones such failure for sufficient reasons, be evicted and the land shall be disposed of in accordance with the provisions of Sec. 84C."

It becomes clear from its bare reading that the statutory purchaser under the Tenancy Act has to use the land or lands in question for personal cultivation and, if he fails to do so, he is liable to summary eviction unless such failure is condoned for sufficient reasons by the Collector. It transpires from the zoning certificate at Annexure A to each petition that the lands involved in each petition have been covered in Town Planning Scheme No. 9 in Baroda with effect from 22nd December 1983. It transpires therefrom that the lands in question are placed in the residential zone in the said town planning scheme. When the lands are placed in the residential zone in a town planning scheme, their situation can be said to be in an urban area and it is possible that the land-holders might be disinclined to cultivate them as the residential area is meant for raising residential houses. Besides, it appears that the lands in question are situated within the urban agglomeration of Baroda by virtue of the Ceiling Act. People in the urban area

would ordinarily not go for personal cultivation as the urbanised society mostly consists of persons involved in commercial and industrial activities. It appears that the author of the order at Annexure G to each petition has remained oblivious and unmindful to this aspect of the matter.

10. Section 43 of the Tenancy Act provides for conversion of new tenure lands into old tenure lands on certain terms and conditions as mentioned therein. It thus becomes clear that rigours of sec. 32R of the Tenancy Act are curtailed to a substantial extent by bringing on the statute book sec. 43 thereof. Permission under sec. 43 thereof is required to be granted by the Collector of the concerned area. When the Collector is approached for such conversion, it would obviously be for the purpose of either sale of the land or lands in question or for obtaining the N.A. permission in that regard. It would thus mean that the person applying for such permission would like to give up personal cultivation of the lands in question. When the Collector grants such permission, it can safely be presumed that he had condoned failure of personal cultivation of the land in question. Similarly, permission under sec. 65 of the Code is ordinarily granted by the Collector. When such permission for non-agricultural use of such new tenure land is granted by the Collector, he can be said to have condoned failure to use the land in question for personal cultivation. It appears that the author of the order at Annexure G to each petition has remained oblivious to these statutory provisions.

11. One cannot lose sight of the relevant provisions contained in sec. 21(1) of the Act. The avowed object behind it is to provide housing accommodation to weaker sections of the society. The excess land in the holding of a land-holder can be utilised at his instance for providing residential accommodation to weaker sections of the society. To further the avowed object in that regard, respondent No. 3 has passed certain resolutions, two of which are at Annexures H and I to each petition. When the State Government itself has allowed conversion of new tenure lands into old tenure lands for the purpose of the scheme under sec. 21(1) of the Act, rigours of sec. 32R of the Tenancy Act are curtailed to a very great extent. It would amount to condonation of non-user of agricultural lands amenable to sec. 32R of the Tenancy Act. The author of the order at Annexure G to each petition could not and should not have remained oblivious to these resolutions passed by the State

Government.

12. It may be noted that respondent No. 1 was exercising powers of the State Government and strangely enough he has remained oblivious and unmindful to the aforesaid government resolutions at Annexures H and I to each petition. Had he applied his mind to these resolutions and other aspects of the matter as pointed out hereinabove, I am sure he would not have fallen into the error of giving the direction to respondent No. 2 to initiate the proceeding for eviction of the occupants of the lands in question for the alleged contravention of sec. 32R of the Tenancy Act. I am therefore of the opinion that the aforesaid direction contained in the impugned order at Annexure G to each petition deserves to be ignored by respondent No. 2.

13. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure E to each petition as affirmed in revision by the order at Annexure G to each petition cannot be sustained in law and it has to be quashed and set aside. The matters deserve to be remanded to respondent No. 2 for fresh fixation of the premium amount for conversion of the lands involved in each petition from new tenure land to old tenure land in the light of the Government Resolutions of 16th March 1982 as amended by the Government Resolution of 4th December 1986 at Annexure I to each petition.

14. In the result, each petition is accepted. The order passed by the Collector of Baroda (respondent No. 2 herein to each petition) on 3rd/17th January 1987 at Annexure E to each petition as affirmed in revision by the order passed by the Additional Chief Secretary, Revenue Department (Appeals) at Ahmedabad on behalf of the State Government on 25th November 1987 at Annexure G to each petition is quashed and set aside. The matters are remanded to respondent No. 2 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Since the matters are very old, respondent No. 2 is directed to decide the fixation of the premium amount as expeditiously as possible but in any case latest by 15th June 1996. I am told at the Bar that the petitioners have already paid the amount of premium as fixed by him and, if the fixation of the premium amount afresh pursuant to this judgment of mine is less than what is paid by the petitioners pursuant to the impugned orders, the excess amount should be refunded as expeditiously as possible preferably within one month from the date of the decision. Rule is accordingly made absolute to the

aforesaid extent with no order as to costs.
